In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 525

CAMCO, INCORPORATED, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 1a-20a) is reported at 340 F. 2d 803. The Board's Decision and Order (R. 67-84)[1] are reported at 140 NLRB 361.

JURISDICTION

The judgment of the court of appeals was entered on January 11, 1965 (Pet. 21a). A petition for re-

[1] "R." refers to the transcript of record, and "J.A." to the Joint Appendix, in the court below. Copies of these documents have been filed with the petition.

hearing was denied on May 19, 1965, and a decree was entered on June 7, 1965 (Pet. 22a-25a). The petition for a writ of certiorari was filed on September 2, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's findings that petitioner interrogated its employees and terminated nine employees because of their union activities, in violation of Sections 8(a)(1) and (3) of the National Labor Relations Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are set forth at pp. 29a-31a of the petition.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

In mid-January 1962, employee Jeffrey Lynn McCall contacted a Union [2] representative and discussed the organization of petitioner's employees (R. 33; J.A. 47). The representative told McCall that a prior organizing attempt had not succeeded, but indicated that a further Union effort was possible if enough employees were interested (R. 33; J.A. 4). On February 9, 1962, after McCall had stimulated employee interest in the Union, employee William J. Locke, Jr.,

[2] District Lodge No. 37, International Association of Machinists, AFL-CIO.

arranged for a meeting between Union representatives and the employees, to be held the following day at the Union hall (R. 33; J.A. 21-22). On February 10, sixteen of petitioner's 95 machine shop and tool employees[3] attended the meeting, signed authorization cards, and established an organizing committee consisting of employees McMen, Locke, Bownds, Baggett, and McCall (R. 33; J.A. 23, 48).

On February 9, Foreman Arthur O'Pry learned of the Union meeting scheduled for the following day (R. 71; J.A. 259). On February 13, and for the next two days, he, along with Shop Superintendent Walter Theek and Foreman J.C. Cook, engaged in an extensive and selective campaign of interrogation. Thus, on February 13, Cook asked employee Locke whether he had heard rumors "going around" about a union; Locke replied that he knew nothing about them (R. 32, 68-69; J.A. 272). Cook went on to tell Locke "to keep his feet on the ground," and that it would be to Locke's benefit if he "stayed out of it" (R. 68-69; J.A. 240). On the same day, Foreman O'Pry asked employee Cox if he had attended the Union meeting; Cox first denied attending, but later said he had (R. 39, 47-69; J.A. 129, 265-266). During the period between February 13 and February 15, O'Pry also asked employees McCall, Clepper, Yeager, and Williams whether they had attended the Union meeting;

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[3] The 16 employees were McMen, Locke, Carrier, Irby, Ledbetter, Hughes, Barnett, Bownds, Cox, Clepper, McCall, Yeager, Koscianski, Patterson, Baggett and Long (R. 64-70; J.A. 17-18, 22-23, 37-38, 47-48, 95-96, 128, 145).

Williams denied that he had,[4] but the three others admitted that they had been present (R. 46-47, 69; J.A. 260-261, 264, 266-268, 271-272).[5] On February 15, Shop Superintendent Theek asked Locke if he had attended the Union meeting and in the same conversation mentioned the Company's employee benefits; Locke admitted attending the meeting (R. 68; J.A. 221-222).

Early in 1962, petitioner decided to reduce its work force in order to effect economies in its operations (R. 70-71; J.A. 203-204). On February 13, three days after the Union meeting, petitioner terminated McMen, who was a leader in the Union's organizing efforts (R. 70-71; J.A. 14-15, 17, 285-286). On February 16, petitioner terminated 10 other employees (R. 70; J.A. 5-7).[6] All of these 11 employees, the only production and maintenance employees terminated during February (R. 69-70; J.A. 6-9, 323-328), were among the 16 employees who had attended the Union's February 10 meeting (*supra*, p. 3).

B. THE BOARD'S CONCLUSIONS AND ORDER

The Board concluded that petitioner's interrogation of its employees as to their union activities was

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[4] Williams was the only employee interrogated who in fact had not attended the meeting (R. 71, n. 10; J.A. 372).

[5] In addition, Foreman O'Pry admitted interrogating employees Baggett and Carrier as to whether they had attended the meeting; both said that they had (J.A. 264, 266-267). And, Foreman Cook admitted that he questioned employees Bownds, Locke, Ledbetter and Irby (J.A. 238-242).

[6] Locke, Carrier, Irby, Ledbetter, Hughes, Barnett, Bownds, Cox, Clepper, and McCall.

extensive and coercive, and thus violated Section 8 (a) (1) of the Act. The Board further concluded that petitioner violated Section 8(a) (3) of the Act by selecting the 11 employees who were terminated because of their union activity (R. 78).[7] The Board ordered petitioner to cease and desist from the unfair labor practices found, and to reinstate the 11 discriminatees with back pay (R. 82-84).

C. THE COURT OF APPEALS' DECISION

The court of appeals held that "fair inferences and substantial evidence compel affirmance of the Board's finding that Camco's interrogation of its employees violated Section 8(a) (1) of the Act" (Pet. 10a). The court also sustained the Board's finding of discrimination as to 9 of the 11 employees who were terminated, but held that employees McMen and Cox were discharged for cause. Except in these respects, the court enforced the Board's order (Pet. 2a, 20a).

ARGUMENT

1. Petitioner's basic contention (Pet. 14-19) is that the court of appeals failed to consider the record as a whole in affirming the Board's findings that 9 employees were terminated because of their union activity. However, an examination of the court's opin-

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[7] The Board rejected the Trial Examiner's conclusion that, although petitioner committed "certain technical violations of the Act, principally interrogation of employees," a remedial order was not warranted under the circumstances of this case (R. 58).

ion shows that this contention is plainly without substance (see Pet. 6a, 14a-19a). In any event, it is clear that the record amply supports the Board's findings of discrimination.

Thus, of the 95 employees in the production department, 16 attended the Union meeting on February 10 and signed authorization cards. Within the next six days, 11 of the 16 were terminated—the only production department employees discharged in February. Moreover, this action occurred in the midst of an extensive program of interrogation—confined, except in one case, to those who had attended the Union meeting—during which the Company made manifest its hostility to the Union and attempted to coerce the employees into rejecting the Union. (*Supra*, pp. 3-4.) Upon these facts, plus the further circumstance that the reasons given by the Company for selecting the employees for discharge did not stand up under analysis [8] (see 140 NLRB at 364-366, 367-368), the Board was fully justified, as the court below concluded, in finding that 9 of the employees had been discriminated against because of their union activity.[9]

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[8] Except in the case of employees McMen and Cox, who the court below found were discharged for cause (Pet. 20a).

[9] Petitioner's additional contentions (Pet. 20) with respect to two of the discriminatees, Irby and McCall, likewise raise only evidentiary issues which do not warrant review by this Court. The contention that McCall quit is contrary to his uncontradicted testimony, which was accepted by the Board, that petitioner's vice-president, Hughes, told McCall that he was laid off for economic reasons (R. 76; J.A. 50-51). Similarly, the Board rejected, as a pretext, the Company's claim that Irby was discharged because of a Company rule which

2. Petitioner contends (Pet. 20-21) that the court of appeals, in affirming the Board's finding of unlawful interrogation, improperly shifted the burden of proof to petitioner. There is no substance to this contention. The court's opinion plainly shows that, in determining whether the interrogation here was coercive, the court looked to the nature of the questions and the circumstances surrounding the questioning (see Pet. 2a-10a). Its approach was thus in harmony with that of other courts of appeals. See *e.g.*, *Bourne* v. *National Labor Relations Board*, 332 F. 2d 47, 48 (C.A. 2); *National Labor Relations Board* v. *Power Equipment Co.*, 313 F. 2d 438, 440 (C.A. 6); *S.H. Kress & Co.* v. *National Labor Relations Board*, 317 F. 2d 225, 228-229 (C.A. 9). In any event, in view of petitioner's extensive campaign of interrogation, which was coupled with promises of benefit, implied threats, and the discharge of 11 Union adherents, it is clear that there is adequate support for the Board's finding that the interrogation was coercive.

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subjected employees involved in garnishment proceedings to immediate dismissal. The Board's finding was clearly warranted in view of the Company's delay in taking action against Irby and the fact that previous infractions of the rule had never been punished by the harsh sanction of discharge. (R. 77; J.A. 183-186.)

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 1965

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